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FILED

March 24, 2003

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE SUSPENSION)	
OR REVOCATION OF THE LICENSE OF)	Administrative Action
)
DANILQ S. MALLADA, M.D.)	FINAL ORDER OF DISCIPLINE
LICENSE NO. Ma41180)	
)
TO PRACTICE MEDICINE AND SURGERY)	
IN THE STATE OF NEW JERSEY)	

This matter was opened to the New Jersey State Board of Medical Examiners upon receipt of information which the Board has reviewed and on which the following findings of fact and conclusions of law are made;

FINDINGS OF FACT

1. Respondent, Danilo S. Mallada, M.D., License No. MA41180, is a physician licensed in the State of New Jersey since 1982 and has been a licensee at all times relevant hereto. Respondent's license is currently active.

2. On or about November 14, 2001, the Respondent entered into a Stipulated Settlement and Disciplinary Order ("California Order") with the California Medical Board ("California Board"). By Decision dated November 20, 2001, the California Order

CERTIFIED TRUE COPY

was adopted by the Division of Medical Quality. A copy of the California Decision and Order is attached as Exhibit A.

3. In accordance with the California Order, Respondent waived his right to contest certain charges and agreed that at a hearing, a factual basis for the charges could be established.

4. The charges in the Accusation to which Respondent agreed in the California Order include three separate causes for discipline against Respondent for committing gross negligence, repeated negligent acts and/or incompetence in that on February 26, 2001, during an epidural anesthetic infusion, Respondent extubated patient R.R.K. , then could not properly reintubate R.R.K. which led to a 10 to 20 minute period of oxygen deficiency for R.R.K. More specifically, the following acts and omissions exposed Respondent's California certificate to discipline for gross negligence, repeated negligent acts, and incompetence:

- (1) Failing to immediately suspect esophageal intubation in the presence of end tidal carbon dioxide tracing (capnograph);
- (2) Failing to recognize a potentially difficult airway in a high risk patient (obese and pregnant);
- (3) Failing to take appropriate steps to deal with such an airway; and
- (4) Failing to properly manage an ineffective epidural anesthetic.

5. Further, the charges in the Accusation include three separate causes for discipline against Respondent for committing gross negligence, repeated negligent acts and/or incompetence in that on December 7, 2000 during a consult for

neuraxial analgesic for labor on Patient Number 8463658, a pregnant female in active labor, Respondent placed an epidural anesthetic at the T-12 - L1 level which initially worked but did not seem to work at all as labor progressed. More specifically, the following acts and omissions exposed Respondent's California certificate to discipline for gross negligence, repeated negligent acts and incompetence:

- (1) Failing to properly manage an ineffective epidural anesthetic for labor;
- (2) Failing to document steps for troubleshooting patchy epidural anesthetics for labor;
- (3) Failing to adequately document blood pressure and analgesic response;
- (4) Improper intubation the patient at the T-12 - L1 level rather than the L4 - L5 level; and
- (5) Using Nonsteroidal Anti-Inflammatory Drugs (NSAIDS) which are contraindicated in pregnancy and especially in Labor.

6. There are charges in the Accusation, including three separate causes for discipline against Respondent for committing gross negligence, repeated negligent acts and/or incompetence in that he failed to monitor intracardiac pressures, intravascular volume, and systemic vascular resistance on January 15, 2001, when Respondent provided care to Patient Number 1053364.

More specifically, the following acts and omissions exposed Respondent's California certificate to discipline for gross negligence, repeated negligent acts and incompetence:

- (1) Failing to monitor intracardiac pressures, intravascular pressure, and systemic vascular resistance in a high risk patient; and

(2) Failing to properly assess anesthetic and surgical risk in a high risk patient.

7. Pursuant to the California Order, Respondent's Physician and Surgeon's Certificate was revoked. However, the revocation was stayed and Respondent was placed on probation for 5 years on certain terms and conditions, including, but not limited to:

- (1) Suspension from the practice of medicine for 6 months commencing on June 26, 2001;
- (2) Completion of an education program aimed at correcting any areas of deficient practice or knowledge which shall not be less than 20 hours per year for each year of probation, such program is in addition to the continuing medical education requirement for re-licensure;
- (3) Successful completion of an ethics course;
- (4) Enrollment in the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine ("PACE Program") and undergo assessment, clinical training and examination;
- (5) Within 60 days after completion of the PACE Program, take and pass an oral clinical exam or written exam in the subject of anesthesiology and administered by the Division or its designee;
- (6) Undergo a psychiatric evaluation and undergo psychiatric treatment if required by the Division or its designee;
- (7) Submit to the Division or its designee a plan of practice in which Respondent's practice shall be monitored by another physician in Respondent's field of practice, who shall provide periodic reports;
- (8) Obey all laws;
- (9) Provide quarterly reports on compliance with the California Order;
- (10) Comply with the Probation Surveillance Program;
- (11) Appear for interviews as requested by the Division;
- (12) Periods of temporary or permanent residence or practice outside California or non-practice within California will not apply to the reduction of the probationary order;
- (13) Successfully complete probation for full restoration;

(14) Reimburse the Division in the amount of \$4,000.00 for costs; and
(15) Pay costs associated with probation monitoring each and every year of probation in the amount of \$2,488.00, which may be annually adjusted.

8. Respondent submitted an application to renew his New Jersey license on or about June 29, 2001. He responded "No" to the questions "Has your professional license been revoked or suspended (whether active or stayed) by any licensing board?" and "Is any action now pending against your professional License or have you been permitted to surrender or otherwise relinquish your license to avoid inquiry, investigation or action by any state licensing board?" Although Respondent's certificate had been suspended by the California Board by Interim Suspension Order dated June 26, 2001 after a hearing before an Administrative Law Judge on June 25, 2001, he did not answer "Yes" to the questions above. The Renewal Application questions are attached as Exhibit B.

CONCLUSIONS OF LAW

1. The above California action provide grounds to take disciplinary action against Respondent's license to practice medicine and surgery in New Jersey pursuant to N.J.S.A. 45:1-21(g) in that Respondent has had his authority to practice medicine and surgery in California revoked, such revocation was stayed, Respondent's license was placed on probation for a 5 year period which includes a suspension for a 6 month period.

2. The above California action provides grounds to take disciplinary action against Respondent's license to practice medicine in New Jersey pursuant to N.J.S.A. 45:1-21 (c) and (d) in that Respondent's agreement that a factual basis could be established for the charges in the California Accusation is tantamount to an admission to the charges which establish that Respondent has engaged in gross negligence, repeated acts of negligence and incompetence.

3. Respondent's failure to answer the above referenced questions on the Board's Biennial Renewal Application truthfully constitutes the use of dishonesty in violation of N.J.S.A. 45:1-21(b).

DISCUSSION

Based on the foregoing findings and conclusions, a Provisional Order of Discipline proposing revocation of Respondent's license to practice medicine and surgery in the State of New Jersey was entered on October 8, 2002 and a copy was forwarded to Respondent's last known addresses by means of both regular and certified mail, The Provisional Order was subject to finalization by the Board at 5:00 p.m. on the 30th business day following entry unless Respondent requested a modification or dismissal of the stated Findings of Fact or Conclusions of law by submitting a written request for reasons why said findings and conclusions should be modified or dismissed and submitting any

and all documents or other written evidence supporting Respondent's request for consideration and reasons therefor.

On October 8, 2002, the Provisional Order was mailed by both regular and certified return-receipt mail to 46 Drayton Lane, Plainsboro, NJ 08536. The envelope sent by regular mail was not returned by the Post Office as undeliverable. The green return-receipt card #7000-1530-0002-0918-9478 was returned signed. Although the record reflects that the Provisional Order was served upon Respondent, no response has been received to date. Accordingly the Board considered the matter, determined that further proceedings were not necessary and the Provisional Order should be made final.

ACCORDINGLY, IT IS ON THIS 24th DAY OF March , 2003,
HEREBY ORDERED THAT:

1. Respondent's license to practice medicine in the State of New Jersey be and hereby is revoked.
2. Prior to resuming active practice in New Jersey, Respondent shall be required to appear before the Board (or a committee thereof) to demonstrate fitness to resume practice, and any practice in this State prior to said appearance shall constitute grounds for a charge of unlicensed practice. In addition, the Board reserves the right to place restrictions on Respondent's practice should his license be reinstated.

NEW JERSEY ~~STATE~~ BOARD OF MEDICAL EXAMINERS

William Harrer MD BLD

By: _____

William V. Harrer, M.D., B.L.D.
Board President

**DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE
WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE
HAS BEEN ACCEPTED**

APPROVED BY THE BOARD ON MAY 10, 2000

All licensees who are the subject of a disciplinary order of the Board are required to provide the information required on the Addendum to these Directives. The information provided will be maintained separately and will not be part of the public document filed with the Board. Failure to provide the information required may result in further disciplinary action for failing to cooperate with the Board, as required by N.J.A.C. 13:45C-1 et seq. Paragraphs 1 through 4 below shall apply when a license is suspended or revoked or permanently surrendered, with or without prejudice. Paragraph 5 applies to licensees who are the subject of an order which, while permitting continued practice, contains a probation or monitoring requirement.

1. Document Return and Agency Notification

The licensee shall promptly forward to the Board office at Post Office Box 183, 140 East Front Street, 2nd floor, Trenton, New Jersey 08625-0183, the original license, current biennial registration and, if applicable, the original CDS registration. In addition, if the licensee holds a Drug Enforcement Agency (DEA) registration, he or she shall promptly advise the DEA of the licensure action. (With respect to suspensions of a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board. In addition, at the conclusion of the term, the licensee should contact the DEA to advise of the resumption of practice and to ascertain the impact of that change upon his/her DEA registration.)

2. Practice Cessation

The licensee shall cease and desist from engaging in the practice of medicine in this State. This prohibition not only bars a licensee from rendering professional services, but also from providing an opinion as to professional practice or its application, or representing him/herself as being eligible to practice. (Although the licensee need not affirmatively advise patients or others of the revocation, suspension or surrender, the licensee must truthfully disclose his/her licensure status in response to inquiry.) The disciplined licensee is also prohibited from occupying, sharing or using office space in which another licensee provides health care services. The disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or equipment. In no case may the disciplined licensee authorize, allow or condone the use of his/her provider number by any health care practice or any other licensee or health care provider. (In situations where the licensee has been suspended for less than one year, the licensee may accept payment from another professional who is using his/her office during the period that the licensee is suspended, for the payment of salaries for office staff employed at the time of the Board action.)

A licensee whose license has been revoked, **suspended for one (1) year** or more or permanently surrendered must remove signs and take **affirmative** action to **stop advertisements** by which his/her eligibility to practice is represented. The licensee must also take steps to remove his/her name from professional listings, telephone directories, professional **stationery**, or billings. If **the licensee's** name is utilized in a group practice title, it shall be deleted. Prescription **pads** bearing the licensee's name **shall** be destroyed. A destruction report form obtained from the Office of Drug Control (973-504-6558) must be filed. If no other licensee is providing **services** at the location, **all medications** must be removed and returned to the manufacturer, if possible, destroyed or safeguarded. (In situations where a license has been suspended for **less** than one year, prescription **pads** and medications need not be destroyed but **must** be **secured** in a locked place for safekeeping.)

3. Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations and Limited Liability Companies

A **licensee shall** not charge, receive or share in any fee **for** professional **services** rendered by him/herself or others while barred from engaging in the professional practice. The licensee may be compensated for the reasonable value of services **lawfully** rendered and **disbursements** incurred on a patient's behalf prior to the effective date of the **Board** action.

A licensee who **is** a shareholder in a professional service corporation organized to engage in the professional practice, whose license is revoked, surrendered or suspended **for** a term **of one (1) year** or more shall be deemed to be disqualified from the practice within the meaning of the Professional Service Corporation Act. (N.J.S.A. 14A:17-11). A disqualified licensee shall divest him/herself of **all** financial interest in the professional service corporation pursuant to N.J.S.A. 14A:17-13(c). A licensee who is a member of a limited liability company organized pursuant to N.J.S.A. 42:1-44, shall divest him/herself of all financial interest. Such divestiture shall occur within 90 days following the the entry of the Order rendering the licensee disqualified to participate **in** the applicable form of ownership. Upon divestiture, a licensee shall forward to the Board a copy of documentation forwarded to the Secretary of State, Commercial Reporting Division, demonstrating that the interest has been terminated. If the licensee **is** the sole shareholder in a professional service corporation, the corporation must **be** dissolved within 90 days of the licensee's disqualification.

4. Medical Records

If, **as** a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that during the three (3) month period following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may **be** obtained. The **message** should inform patients of the names and telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be **disseminated** by means of a notice to **be published** at least once **per** month for three (3) months in a newspaper of

general circulation in the geographic vicinity in which the practice **was** conducted. At the end of **the** three month **period**, the licensee shall file with the Board the **name and telephone** number of the contact person who **will have access** to **medical** records of former **patients**. Any change **in** that **individual** or his/her telephone **number** shall **be** promptly reported **to** the Board. **When** a **patient** or his/her representative **requests** a copy of his/her medical record or **asks** that record **be** forwarded to another health **care** provider, the licensee **shall** promptly provide **the record** without charge to **the** patient.

5. Probation/Monitoring Conditions

With **respect** to any licensee who **is** the subject of any Order **imposing** a probation or monitoring requirement or a stay of **an** active **suspension**, **in** whole or in **part**, which **is** conditioned upon compliance with a **probation or** monitoring requirement, **the** licensee **shall** fully cooperate with the Board and its **designated** representatives, including **the** Enforcement Bureau of the Division of Consumer **Affairs**, in ongoing monitoring of the licensee's status and practice. Such monitoring **shall be** at the **expense** of the disciplined practitioner.

(a) Monitoring of practice conditions may include, but **is** not **limited** to, inspection of **the** professional premises and equipment, **and** inspection and copying of patient records (confidentiality of patient identity shall **be** protected **by the Board**) to **verify** compliance with the **Board** Order and **accepted** standards of practice.

(b) Monitoring of status conditions for an impaired practitioner may include, but is not limited to, practitioner cooperation in providing releases permitting **unrestricted access** to records and other information to the extent **permitted** by **law** from any treatment facility, other treating practitioner, support group or other individual/facility involved in **the** education, treatment, monitoring or oversight of the practitioner, or maintained **by** a rehabilitation program for impaired practitioners. If bodily substance monitoring has been **ordered**, **the** practitioner shall fully cooperate **by** responding to a **demand** for breath, **blood**, urine or other sample in a timely manner and providing the designated sample,

ADDENDUM

Any licensee who ~~is~~ the subject of an order of the Board suspending, revoking or otherwise conditioning the license, shall provide the following information at the time that the order is signed, if it is entered by consent, or immediately after service of a fully executed order entered after a hearing. The information required here is necessary for the Board to fulfill its reporting obligations:

Social Security Number': _____

List the Name and Address of any and all Health Care Facilities with which you are affiliated:

List the Names and Address of any and all Health Maintenance Organizations with which you are affiliated:

Provide the names and addresses of every person with whom you are associated in your professional practice: (You may attach a blank sheet of stationery bearing this information).

¹ Pursuant to 45 CFR-Subtitle A Section 61.7 and 45 CFR Subtitle A Section 60.8, the Board is required to obtain your Social Security Number and/or federal taxpayer identification number in order to discharge its responsibility to report adverse actions to the National Practitioner Data Bank and the HIP Data Bank.

NOTICE OF REPORTING PRACTICES OF BOARD
REGARDING DISCIPLINARY ACTIONS

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Medical Examiners are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record, including the transcript and documents marked in evidence, are available for public inspection, upon request.

Pursuant to 45 CFR Subtitle A 60.8, the Board is obligated to report to the National Practitioners Data Bank any action relating to a physician which is based on reasons relating to professional competence or professional conduct:

- (1) Which revokes or **suspends** (or **otherwise** restricts) a license,
- (2) Which censures, reprimands or places on probation,
- (3) Under which a license is **surrendered**.

Pursuant to 45 CFR Section 61.7, the Board is obligated to report to the Healthcare Integrity and Protection (HIP) Data Bank, any formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, **censure** or probation or any other loss of license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary **surrender**, non-renewability, or **otherwise**, or any other negative action or finding by such Federal or State agency that is publicly available information.

Pursuant to N.J.S.A. 45:9-19.13, if the Board refuses to **issue**, suspends, revokes or otherwise places conditions on a license or permit, it is obligated to notify each licensed health care facility and health maintenance organization with which a licensee is affiliated and every other board licensee in this state with whom he or she is directly associated in private medical practice.

In accordance with an agreement with the Federation of State Medical Boards of the United States, a list of all disciplinary orders are provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the order will appear on the public agenda for the next monthly Board meeting and is forwarded to those members of the public requesting a copy. In addition, the same summary will appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

Within the month following entry of an order, a summary of the order will appear in a Monthly Disciplinary Action Listing which is made available to those members of the public requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the orders entered by the Board.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from disclosing any public document.

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DAN SODUSTA MALLADA, M.D.
5730 N. First Street, Suite 105
PMB #205, Fresno, CA 93710

Physician's and Surgeon's Certificate
No. C- 43360

Respondent.

Case No. OS-2001-119217

OAH No. N-2001-070160

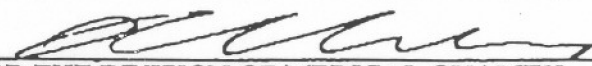
DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Division of Medical Quality, Medical Board of California of the Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on December 20, 2001 at 5:00 P.M.

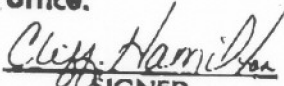
It is so ORDERED November 20, 2001

HAZEM H. CHEHABI, M.D., President


FOR THE DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

MEDICAL BOARD OF CALIFORNIA

I do hereby certify that
this document is true
and correct copy of the
original on file in this
office.


SIGNED 3/01/02
DATE

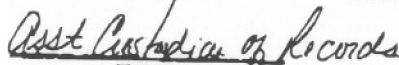

TITLE

EXHIBIT A

1 BILL LOCKYER, Attorney General
of the State of California
2 ISA R. RODRIGUEZ, State Bar No. 104838
Deputy Attorney General
3 California Department of Justice
2550 Mariposa Mall, Room 5090
4 Fresno, California 93721
Telephone: (559) 444-2417
5 Facsimile: (559) 488-7387

6 Attorneys for Complainant

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BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

11

12 In the Matter of the Accusation Against:

13 DAN SODUSTA MALLADA, M.D.
5730 N. First Street, Suite 105
14 PMB #205
Fresno, CA 93710

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16 Physician's and Surgeon's Certificate
No. C-43360

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Respondent.

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Case No. 08-2001-119217

OAH No. N-2001-070160

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibility of the Division of Medical Quality, Medical Board of California of the Department of Consumer Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to the Division for approval and adoption as the final disposition of the Accusation.

PARTIES

1. Ron Joseph (Complainant) is the Executive Director of the Medical Board of California. He brought this action solely in his official capacity and is represented in this matter by Bill Lockyer, Attorney General of the State of California, by Isa R. Rodriguez, Deputy Attorney General.

2. Respondent is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about May 29, 1996, the Medical Board of California issued Physician's and Surgeon's Certificate No. C- 43360 to DAN SODUSTA MALLADA, M.D. (Respondent). The certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 08-2001-1192 and will expire on February 28, 2002, unless renewed.

JURISDICTION

4. Accusation No. 08-2001-119217 was filed before the Division of Medical Quality, Medical Board of California of the Department of Consumer Affairs, (Division), and is currently pending against Respondent. The Accusation, together with all other statutorily required documents were properly served on Respondent on July 9, 2001, and Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 08-2001-119217 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 08-2001-119217. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and *gives up* each ~~and every right set~~ forth above,

///

1 CULPABILITY

2 8. Respondent understands and agrees that the charges and allegations in
3 Accusation No. 08-2001-119217, it proven at a hearing, constitute cause for imposing discipline
4 upon his Physician's and Surgeon's Certificate No. C-43360.

5 9. For the purpose of resolving the Accusation without the expense and
6 uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could
7 establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up
8 his right to contest those charges.

9 10. Respondent agrees that his Physician's and Surgeon's Certificate No. C-
10 43360 is subject to discipline and he agrees to be bound by the Division's imposition of
11 discipline as set forth in the Disciplinary Order below.

12 CIRCUMSTANCES IN MITIGATION

13 11. Respondent DAN SODUSTA MALLADA, M.D. was initially licensed to
14 practice medicine in the State of New Jersey in 1982 before moving to California. Respondent
15 has never been the subject of any disciplinary action. Respondent was also in the United States
16 Army where he was a recipient of unit commendations for education and safety programs,
17 Additionally, while in the army, respondent served in the Persian Gulf conflict. He is
18 acknowledging responsibility at an early stage in the proceedings in order to avoid the
19 uncertainty and expense of going to hearing.

20 RESERVATION

21 12. The admissions made by Respondent herein are only for the purposes of
22 this proceeding, or any other proceedings in which the Division of Medical Quality, Medical
23 Board of California or other professional licensing agency is involved, and shall not be
24 admissible in any other criminal or civil proceeding.

25 CONTINGENCY

26 13. This stipulation shall be subject to approval by the Division. Respondent
27 understands and agrees that the Medical Board of California's staff and counsel for Complainant
28 may communicate directly with the Division regarding this stipulation and settlement, without

1 notice to or participation by Respondent. By signing the stipulation, Respondent understands and
2 agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time
3 the Division considers and acts upon it, If the Division fails to adopt this stipulation as its
4 Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or
5 effect, **except** for this paragraph, it shall be inadmissible in any legal action between the parties,
6 and the Division shall not be disqualified from further action by having considered this matter.

7 14. The parties understand and agree that facsimile copies of this Stipulated
8 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
9 force and effect as the originals.

10 15. In consideration of the foregoing admissions and stipulations, the parties
11 agree that the Division may, without further notice or formal proceeding, issue and enter the
12 following Disciplinary Order:

13 **DISCIPLINARY ORDER**

14 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. C-
15 43360 issued to Respondent DAN SODUSTA MALLADA, M.D. is revoked. However, the
16 revocation is stayed and Respondent is placed on probation for five (5) years on the following
17 terms and conditions.

18 Within 15 days after the effective date of this decision the respondent shall
19 provide the Division, or its designee, proof of service that respondent has served a true copy of
20 this decision on the Chief of Staff or the Chief Executive Officer at every hospital where
21 privileges or membership are extended to respondent or at any other facility where respondent
22 engages in the practice of medicine and on the Chief Executive Officer at every insurance carrier
23 where malpractice insurance coverage is extended to respondent,

24 1. **ACTUAL SUSPENSION** As part of probation, respondent is suspended
25 from the practice of medicine for 6 months beginning from June 26, 2001, the date the Interim
26 Suspension Order issued in this matter (OAH No. N-2001-060184).

27 2. **DRUGS & ABSTAIN FROM USE** Respondent shall abstain completely
28 from the personal use or possession of controlled substances as defined in the California Uniform

1 Controlled Substances Act, and dangerous drugs as defined by Section 4211 of the Business and
2 Professions Code, or any drugs requiring a prescription. This prohibition does not apply to
3 medications lawfully prescribed to respondent for a *bona fide* illness or condition by another
4 practitioner.

5 3. A IN SE Respondent shall abstain
6 completely from the use of alcoholic beverages.

7 4. BIOLOGICAL FLUID TESTING Respondent shall immediately submit
8 to biological testing, at respondent's cost, upon the request of the Division or its designee.

9 5. EDUCATION COURSE Within ninety (90) days of the effective date of
10 this decision, and on an annual basis thereafter, respondent shall submit to the Division or its
11 designee for its prior approval an educational program or course to be designated by the Division
12 or its designee which shall be aimed at correcting any areas of deficient practice or knowledge
13 which shall not be less than 20 hours per year, for each year of probation. This program shall be
14 in addition to the Continuing Medical Education (CME) requirements for re-licensure.
15 Following the completion of each course, the Division or its designee may administer an
16 examination to test respondent's knowledge of the course. Respondent shall provide proof of
17 attendance for 45 hours of continuing medical education of which 20 hours were in satisfaction
18 of this condition and were approved in advance by the Division or its designee.

19 6. ETHICS COURSE Within sixty (60) days of the effective date of this
20 decision, respondent shall enroll in a course in Ethics approved in advance by the Division or its
21 designee, and shall successfully complete the course during the first year of probation.

22 7. PHYSICIAN ASSESSMENT AND CLINICAL EDUCATION
23 PROGRAM Within ninety (90) days from the effective date of this decision, Respondent, at
24 his expense, shall enroll in the Physician Assessment and Clinical Education Program at the
25 University of California, San Diego School of Medicine (hereinafter, the "PACE Program") and
26 shall undergo assessment, clinical training and examination. First, the Respondent shall undergo
27 the comprehensive assessment program including the measurement of medical skills and
28 knowledge, the appraisal of physical health and psychological testing. After assessment, the

1 PACE Evaluation Committee will review all results and make a recommendation to the Division
2 or its designee, the Respondent and other authorized personnel as to what clinical training is
3 required, including scope and length, treatment of any medical or psychological condition, and
4 any other factors affecting the Respondent's practice of medicine. The Respondent shall
5 undertake whatever clinical training and treatment of any medical or psychological condition as
6 may be recommended by the PACE Program.

7 Finally, at the completion of the PACE Program, Respondent shall submit to an
8 examination on its contents and substance. The examination shall be designed and administered
9 by the PACE faculty. Respondent shall not be deemed to have successfully completed the
10 program unless he/she passes the examination. Respondent agrees that the determination of the
11 PACE Program faculty as to whether or not he/she has passed the examination and/or
12 successfully completed the PACE Program shall be binding.

13 Respondent shall complete the PACE Program no later than six (6) months after
14 his/her initial enrollment unless the Division or its designee agrees in writing to a later time for
15 completion,

16 If Respondent successfully completes the PACE Program, including the
17 examination referenced above, he/she agrees to cause the PACE representatives to forward a
18 Certification of Successful Completion of the program to the Division or its designee.

19 If Respondent fails to successfully complete the PACE Program within the time
20 limits outlined above, he shall be suspended from the practice of medicine.

21 Failure to participate in, and successfully complete all phases of the PACE
22 Program, as outlined above, shall constitute a violation of probation.

23 8 ORAL CLINICAL OR WRITTEN EXAM Respondent shall take and
24 pass an oral clinical exam or written exam in the subject of anesthesiology and administered by
25 the Division or its designee. This examination shall be taken within sixty (60) days after
26 completion of the PACE Program. If respondent fails the first examination, respondent shall be
27 allowed to take and pass a second examination, which may consist of a written as well as an oral
28 examination. The waiting period between the first and second examinations shall be at least

1 three (3) months. If respondent fails to pass the first and second examinations, respondent may
2 take a third and final examination after waiting a period of one (1) year. Failure to pass the oral
3 clinical examination within eighteen (18) months after the effective date of this decision shall
4 constitute a violation of probation. The respondent shall pay the costs of all examinations. For
5 purposes of this condition, if respondent is required to take and pass a written exam, it shall be
6 either the Special Purpose Examination (SPEX) or equivalent examination as determined by the
7 Division or its designee.

8 Respondent shall not practice medicine until respondent has passed the required
9 examination and has been so notified by the Division or its designee in writing. This prohibition
10 shall not bar respondent from practicing in a clinical training program approved by the Division
11 or its designee. Respondent's practice of medicine shall be restricted only to that which is
12 required by the approved training program.

13 9. PSYCHIATRIC EVALUATION Within thirty (30) days of the effective
14 date of this decision, and on a periodic basis thereafter as may be required by the Division or its
15 designee, respondent shall undergo a psychiatric evaluation (and psychological testing, if deemed
16 necessary) by a Division-appointed psychiatrist, who shall furnish an evaluation report to the
17 Division or its designee. The respondent shall pay the cost of the psychiatric evaluation,

18 If respondent is required by the Division or its designee to undergo psychiatric
19 treatment, respondent shall within thirty (30) days of the requirement notice submit to the
20 Division for its prior approval the name and qualifications of a psychiatrist of respondent's
21 choice. Respondent shall undergo and continue psychiatric treatment until further notice from
22 the Division or its designee. Respondent shall have the treating psychiatrist submit quarterly
23 status reports to the Division or its designee indicating whether the respondent is capable of
24 practicing medicine safely.

25 In furtherance of this provision, respondent agrees to sign a medical release
26 authorizing the Division-appointed psychiatrist access to respondent's psychiatric/medical
27 records. Information obtained in this manner shall be used to ensure a complete and accurate
28 psychiatric evaluation.

ADP
MR
Respondent shall not engage in the practice of medicine until notified by the Division, or its designee, of its determination that respondent is mentally fit to practice safely.

If the evaluation or the treating psychiatrist's report determines that respondent is not mentally fit to practice medicine safely, then respondent shall be suspended from the practice of medicine until a repeat evaluation establishes that he can practice safely, as evidenced by written notice to respondent from the Division or its designee.

10. PSYCHOTHERAPY If the Division-appointed psychiatrist determines that respondent requires ongoing psychotherapy, respondent shall, within sixty (60) days of notice of this determination, submit to the Division or its designee for its prior approval the name and qualifications of a psychotherapist of respondent's choice. Upon approval, respondent shall undergo and continue treatment until the Division or its designee deems that no further psychotherapy is necessary. Respondent shall have the treating psychotherapist submit quarterly status reports to the Division or its designee. The Division or its designee may require respondent to undergo psychiatric evaluations by a Division-appointed psychiatrist. If, prior to the termination of probation, respondent is found not to be mentally fit to resume the practice of medicine without restrictions, the Division shall retain continuing jurisdiction over the respondent's license and the period of probation shall be extended until the Division determines that the respondent is mentally fit to resume the practice of medicine without restrictions. The respondent shall pay the cost of the therapy and evaluations.

11. MONITORING Within thirty (30) days of the effective date of this decision, respondent shall submit to the Division or its designee for its prior approval a plan of practice in which respondent's practice shall be monitored by another physician in respondent's field of practice, who shall provide periodic reports to the Division or its designee.

If the monitor resigns or is no longer available, respondent shall, within fifteen (15) days, move to have a new monitor appointed, through nomination by respondent and approval by the Division or its designee.

Respondent is prohibited from engaging in solo practice.

12. SUPERVISION OF PHYSICIAN ASSISTANTS During probation,

1 respondent is prohibited from supervising physician assistants,

2 13. OBEY ALL LAWS Respondent shall obey all federal, state and local
3 laws, all rules governing the practice of medicine in California, and remain in full compliance
4 with any court ordered criminal probation, payments and other orders.

5 14. QUARTERLY REPORTS Respondent shall submit quarterly
6 declarations under penalty of perjury on forms provided by the Division, stating whether there
7 has been compliance with all the conditions of probation.

8 15. PROBATION SURVEILLANCE PROGRAM COMPLIANCE
9 Respondent shall comply with the Division's probation surveillance program. Respondent shall,
10 at all times, keep the Division informed of his business and residence addresses which shall both
11 serve as addresses of record. Changes of such addresses shall be immediately communicated in
12 writing to the Division. Under no circumstances shall a post office box serve as an address of
13 record, except as allowed by Business and Professions Code section 2021(b).

14 Respondent shall, at all times, maintain a current and renewed physician's and
15 surgeon's license.

16 Respondent shall also immediately inform the Division, in writing, of any travel
17 to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more
18 than thirty (30) days.

19 16. INTERVIEW WITH THE DIVISION, ITS DESIGNEE OR ITS
20 DESIGNATED PHYSICIAN(S) Respondent shall appear in person for interviews with the
21 Division, its designee or its designated physician(s) upon request at various intervals and with
22 reasonable notice.

23 17. TOLLING FOR OUT-OF-STATE PRACTICE, RESIDENCE OR IN-
24 STATE NON-PRACTICE In the event respondent should leave California to reside or to
25 practice outside the State or for any reason should respondent stop practicing medicine in
26 California, respondent shall notify the Division or its designee in writing within ten (10) days of
27 the dates of departure and return or the dates of non-practice within California. Non-practice is
28 defined as any period of time exceeding thirty (30) days in which respondent is not engaging in

any activities defined in Sections 2051 and 2052 of the Business and Professions Code, All time spent in an intensive training program approved by the Division or its designee shall be considered as time spent in the practice of medicine. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California or of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary order.

18. COMPLETION OF PROBATION Upon successful completion of probation, respondent's certificate shall be fully restored.

19. VIOLATION OF PROBATION If respondent violates probation in any respect, the Division, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the Division shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

20. COST RECOVERY The respondent is hereby ordered to reimburse the Division the amount of \$4,000 for its investigative and prosecution costs. The reimbursement shall be made in four equal installments of \$1,000 (one thousand dollars) each, due every 6 months, with the first installment due six months after the effective date of this decision, Installment payments, shall be by way of money order or cashier's check made payable to the order of the Medical Board of California. Failure to reimburse the Division's cost of investigation and prosecution shall constitute a violation of the probation order, unless the Division agrees in writing to payment by an installment plan because of financial hardship. The filing of bankruptcy by the respondent shall not relieve the respondent of his responsibility to reimburse the Division for its investigative and prosecution costs.

21. PROBATION COSTS Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Division, which are currently set at \$2,488, but may be adjusted on an annual basis. Such costs shall be payable to the Division of Medical Quality and delivered to the designated probation surveillance monitor


1 no later than January 31 of each calendar year. Failure to pay costs within 30 days of the due
2 date shall constitute a violation of probation.

3 22. LICENSE SURRENDER Following the effective date of this decision, if
4 respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy
5 the terms and conditions of probation, respondent may voluntarily tender his certificate to the
6 Board. The Division reserves the right to evaluate the respondent's request and to exercise its
7 discretion whether to grant the request, or to take any other action deemed appropriate and
8 reasonable under the circumstances, Upon formal acceptance of the tendered license, respondent
9 will not longer be subject to the terms and conditions of probation.

10 ACCEPTANCE

11 I have carefully read the Stipulated Settlement and Disciplinary Order. I
12 understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate
13 No. C-43360. I enter into this Stipulated Settlement and Disciplinary Order voluntarily,
14 knowingly, and intelligently, and agree to be bound by the Decision and Order of the Division of
15 Medical Quality, Medical Board of California.

16 DATED: November 14, 2001,

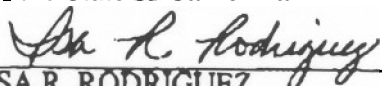
17 
18 DAN SODUSTA MALLADA, M.D.
Respondent

19 ENDORSEMENT

20 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
21 submitted for consideration by the Division of Medical Quality, Medical Board of California of
22 the Department of Consumer Affairs.

23 DATED: November 14, 2001,

24
25 BILL LOCKYER, Attorney General
of the State of California

26 
27 ISA R. RODRIGUEZ
Deputy Attorney General

28 Attorneys for Complainant

Exhibit A

Accusation No. 08-2001-119217

1 BILL LOCKYER, Attorney General
of the State of California
2 ISA R. RODRIGUEZ, State Bar No. 104838
Deputy Attorney General
3 California Department of Justice
2550 Mariposa Mall, Room 5090
4 Fresno, California 93721
Telephone: (559) 444-24 17
5 Facsimile: (559) 488-7387

6 Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO July 9, 20 01
BY Kimberly Kitching ANALYST

7
8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 08 2001 1 19217

11 **DAN SODUSTA MALLADA, M.D.**
12 1011 E. Sierra #102
13 Fresno, CA 93710

A C C U S A T I O N

14 **Physician And Surgeon Certificate No ,C-43360**

15 Respondent.

16
17 **Complainant alleges:**

18 **PARTIES**

19 1. Ron Joseph ("Complainant") brings this Accusation solely in his official
20 capacity as the Executive Director of the Medical Board Of California.

21 2. On or about May 29, 1996, the Medical Board of California issued
22 Physician And Surgeon Certificate Number C-43360 to Dan Sodusta Mallada, M.D.
23 ("Respondent"), The Physician And Surgeon Certificate was in full force and effect at all times
24 relevant to the charges brought herein and will expire on February 28, 2002, unless renewed,

25 **JURISDICTION**

26 3. This Accusation is brought before the Medical Board of California
27 (hereinafter "Board"), under the authority of the following sections of the Business and
28 Professions Code ("Code").

1 4. Section 2004 of the Code states:

2 "The Division of Medical Quality shall have the responsibility for the following:

3 "(a) The enforcement of the disciplinary and criminal provisions of the Medical
4 Practice Act,

5 "(b) The administration and hearing of disciplinary actions.

6 "(c) Carrying out disciplinary actions appropriate to findings made by a medical
7 quality review committee, the division, or an administrative law judge,

8 "(d) Suspending, revoking, or otherwise limiting certificates after the conclusion
9 of disciplinary actions.

10 "(e) Reviewing the quality of medical practice carried out by physician and
11 surgeon certificate holders under the jurisdiction of the board."

12 5. Section 2220 of the Code states:

13 "Except as otherwise provided by law, the Division of Medical Quality may take
14 action against all persons guilty of violating this chapter [Chapter 5, the Medical Practice
15 Act]. The division shall enforce and administer this article as to physician and surgeon
16 certificate holders, and the division shall have all the powers granted in this chapter for
17 these purposes including, but not limited to:

18 "(a) Investigating complaints from the public, from other licensees, from health
19 care facilities, or from a division of the board that a physician and surgeon may be guilty
20 of unprofessional conduct. The board shall investigate the circumstances underlying any
21 report received pursuant to Section 805 within 30 days to determine if an interim
22 suspension order or temporary restraining order should be issued. The board shall
23 otherwise provide timely disposition of the reports received pursuant to Section 805, .

24 "(b) Investigating the circumstances of practice of any physician and surgeon
25 where there have been any judgments, settlements, or arbitration awards requiring the
26 physician and surgeon or his or her professional liability insurer to pay an amount in
27 damages in excess of a cumulative total of thirty thousand dollars (\$30,000) with respect
28 to any claim that injury or damage was proximately caused by the physician's and

1 surgeon's error, negligence, or omission.

2 "(c) Investigating the nature and causes of injuries from cases which shall be
3 reported of a high number of judgments, settlements, or arbitration awards against a
4 physician and surgeon."

5 6. Section 2227 of the Code provides that a licensee who is found guilty
6 under the Medical Practice Act may have his or her license revoked, suspended for a period not
7 to exceed one year, placed on probation and required to pay the costs of probation monitoring, or
8 such other action taken in relation to discipline as the Division deems proper,

9 7. Section 2234 of the Code states:

10 "The Division of Medical Quality shall take action against any licensee who is
11 charged with unprofessional conduct, In addition to other provisions of this article,
12 unprofessional conduct includes, but is not limited to, the following:

13 "(a) Violating or attempting to violate, directly or indirectly, or assisting in or
14 abetting the violation of, or conspiring to violate, any provision of this chapter [Chapter
15 5, the Medical Practice Act].

16 "(b) Gross negligence.

17 "(c) Repeated negligent acts.

18 "(d) Incompetence.

19 "(e) The commission of any act involving dishonesty or conuption which is
20 substantially related to the qualifications, functions, or duties of a physician and surgeon.

21 "(f) Any action or conduct which would have warranted the denial of a
22 certificate."

23 8. Section 14124.12 of the Welfare and Institutions Code states, in pertinent
24 part:

25 "(a) Upon receipt of written notice from the Medical Board of California, the
26 Osteopathic Medical Board of California, or the Board of Dental Examiners of California,
27 that a licensee's license has been placed on probation as a result of a disciplinary action,
28 the department may not reimburse any Medi-Cal claim for the type of surgical service or

1 invasive procedure that gave rise to the probation, including any dental surgery or
2 invasive procedure, that was performed by the licensee on or after the effective date of
3 probation and until the termination of all probationary terms and conditions or until the
4 probationary period has ended, whichever occurs first.' This section shall apply except in
5 any case in which the relevant licensing board determines that compelling circumstances
6 warrant the continued reimbursement during the probationary period of any Medi-Cal
7 claim, including any claim for dental services, as so described. In such a case, the
8 department shall continue to reimburse the licensee for all procedures, except for those
9 invasive or surgical procedures for which the licensee was placed on probation."

10 9. Section 125.3 of the Cadc provides, in pertinent part, that the Division
11 may request the administrative law judge to direct a licensee found to have committed a
12 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
13 investigation and enforcement of the act.

14 FIRST CAUSE FOR DISCIPLINE

15 (Gross Negligence- Patient R.R.K.)

16 10. Respondent is subject to disciplinary action under Code sections 2234(b)
17 and/or 2234(c) and/or 2234(d) in that during an epidural anesthetic infusion, respondent
18 extubated R.R.K. then could not properly reintubate R.R.K. leading to a 10 to 20 minute period
19 during which R.R.K. was oxygen-deficient, The circumstances are as follows:

20 A. On or about March 13, 2001, the Board received an 805 Report filed by
21 Kaiser Foundation Hospital indicating respondent's staff privileges had been summarily
22 suspended. The 805 report stated that early in the procedure to intubate a patient, "the patient's
23 heart stopped and a code was instituted. The back-up anesthesiologist was called and took over
24 the case, removed the tube, and successfully intubated the patient. Dr. Mallada was immediately
25 taken off duty pending the outcome of an investigation."

26 ///

27 ///

28 ///

1 B. The facts underlying this matter are that on February 26, 2001, Patient
2 R.R.K.,¹ a 26-year-old, 5 ft., 4 in., 270 lb. pregnant female, was admitted to Kaiser Permanente
3 Hospital in Fresno, California, for labor and delivery. At or about 3:20 p.m., pursuant to a
4 physician order stating "OK for epidural," respondent instituted an epidural anesthetic infusion.
5 At 6 p.m., the fetus developed a non-reassuring heart rate pattern and the obstetrician decided to
6 proceed to C-section. Anesthesia induction occurred at 7:05 p.m. with surgical incision at 7:11
7 p.m. After initial abdominal wall incision, respondent extubated the patient after noticing a
8 problem with end tidal carbon dioxide tracing. Respondent tried to reintubate the patient but was
9 having trouble. The remaining incisions were made hurriedly with infant delivery at 7:14 p.m.
10 R.R.K. was eventually reintubated by Dr. Derby, apparently without difficulty. At or about 7:10
11 p.m., "code blue" resuscitation began with different accounts estimating that R.R.K. was oxygen
12 deficient for 10 to 20 minutes during which time she suffered cardiac arrest for approximately 16
13 minutes. After reintubation and successful cardiac resuscitation, R.R.K. was transferred to the
14 coronary care unit where she remained without regaining consciousness until her death on March
15 11, 2001. As a result of respondent's ineffective intubation of R.R.K., the extubation of R.R.K.,
16 and the difficulty respondent had trying to reintubate R.R.K., R.R.K. was anoxic for 10 to 20
17 minutes and never regained consciousness before passing away some two weeks later.

18 C. Respondent's conduct as set forth in paragraphs 10.A. and 10.B. above has
19 exposed his certificated to discipline for gross negligence pursuant to Code section 2234(b) in
20 that:

- 21 1.) He Failed to immediately suspect esophageal intubation in the
22 presence of end tidal carbon dioxide tracing (capnograph);
- 23 2,) He failed to recognize a potentially difficult airway in a high risk
24 patient (obese and pregnant);
- 25 3.) He failed to take appropriate steps to deal with such an airway; and
- 26 4.) He failed to properly manage an ineffective epidural anesthetic.

27
28 1. Initials used to protect privacy. Names will be provided through regular discovery.

1 SECOND CAUSE FOR DISCIPLINE

2 (Repeated Negligent Acts - Patient R.R.K.)

3 11. The facts alleged in paragraph 10.A. and 10.B., above, are realleged and
4 incorporated by reference as if fully set forth here.

5 12. Respondent's conduct, as set forth in paragraphs 10.A. and 10.B., above,
6 has exposed his certificate to discipline for repeated negligent acts, pursuant to Code section
7 2234(c) in that:

- 8 1.) He failed to immediately suspect esophageal intubation in the
9 presence of end tidal carbon dioxide tracing (capnograph);
10 2.) He failed to recognize a potentially difficult airway in a high risk
11 patient (obese and pregnant);
12 3.) He failed to take appropriate steps to deal with such an airway; and
13 4.) He failed to properly manage an ineffective epidural anesthetic.

14 THIRD CAUSE FOR DISCIPLINE

15 (Incompetence - Patient R.R.K.)

16 13. The facts alleged in paragraph 10.A. and 10.B., above, are realleged and
17 incorporated by reference as if fully set forth here.

18 14. Respondent's conduct, as set forth in paragraphs 10.A. and 10.B., above,
19 has exposed his certificate to discipline for incompetence pursuant to Code section 2234(d) in
20 that:

- 21 1.) He failed to immediately suspect esophageal intubation in the
22 presence of end tidal carbon dioxide tracing (capnograph);
23 2.) He failed to recognize a potentially difficult airway in a high risk
24 patient (obese and pregnant);
25 3.) He failed to take appropriate steps to deal with such an airway; and
26 4.) He failed to properly manage an ineffective epidural anesthetic.

27 ///

28 ///

1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Gross Negligence/Repeated Negligent Acts/Incompetence - Patient R.R.K.)

3 15. The facts alleged in paragraph 10.A. and 10.B., above, are realleged and
4 incorporated by reference as if fully set forth here.

5 16. Respondent's conduct, as set forth in the First, Second, and Third Causes
6 For Discipline, whether taken collectively, or individually, or in any combination thereof,
7 constitute gross negligence and/or repeated negligent acts and/or incompetence pursuant to Code
8 sections 2234(b) and/or 2234(c) and/or 2234(d).

9 **FIFTH CAUSE FOR DISCIPLINE**

10 (Gross Negligence - Patient Number 8463658')

11 17. Respondent is subject to disciplinary action under Code sections 2234(b)
12 and/or 2234(c) and/or 2234(d) in that he failed to properly manage an ineffective epidural
13 anesthetic for labor. The circumstances are as follows:

14 A. On or about April 13, 2001, the Board received copies of the Quality/Risk
15 Management Reviews for four incidents involving the quality of care respondent provided,
16 including that provided to Patient R.R.K. noted above. The care provided to R.R.K. was
17 determined to be "NOT ACCEPTABLE." Two of the cases, Patient Number 8463648, and
18 Patient Number 10533664, noted a "Significant Deviation from Standard of Care - Most peers
19 agree that the clinical practice was not appropriate." The fourth case was determined to be
20 within the standard of care.

21 B. The facts underlying the care provided Patient Number 8463658 are that
22 on or about December 7, 2000, respondent consulted for neuraxial analgesia for labor on a 37-
23 year-old, pregnant female in active labor. Respondent placed an epidural anesthetic at the T12-
24 L1 level which worked initially but, as labor progressed, did not seem to work at all. Dr. Derby
25 relieved respondent and properly replaced the epidural anesthetic at the L4-L5 level which
26

27
28 2. Patient number used to protect privacy. Names will be provided through regular
discovery.

1 completely relieved all pain and discomfort. When Dr. Derby asked about the placement of the
2 epidural anesthetic, respondent stated "L3-L4" which was not the placement Dr. Derby found.
3 Dr. Derby also questioned respondent about the contraindicated use of NSAIDS (Nonsteroidal
4 Anti-Inflammatory Drugs) in pregnancy and especially labor, Respondent stated he had read
5 about using NSAIDS but offered nothing more. Respondent's course of action is counter to the
6 warnings against such usage in the Physician Desk Reference (PDR). Dr. Derby concluded he
7 wasn't sure if respondent understood the significance of using NSAIDS in labor and the possible
8 cause of non-closure of PDA (patient ductus arterious) in the child, Additionally, respondent did
9 not document steps for troubleshooting patchy epidural: anesthetics for labor.

10 C. Respondent's conduct, as set forth in paragraphs 17.A. and 17.B. above
11 has exposed his certificate to discipline for gross negligence pursuant to Code section 2234(b) in
12 that;

- 13 1. He failed to properly manage an ineffective epidural anesthetic for
14 labor;
- 15 2. He failed to document steps for troubleshooting patchy epidural
16 anesthetics for labor;
- 17 3. He failed to adequately document blood pressure and analgesic
18 response;
- 19 4. He improperly intubated the patient at the T12-L1 level rather than
20 the L4 - L5 level; and
- 21 5. He used Nonsteroidal Anti-Inflammatory Drugs (NSAIDS) which
22 are contraindicated in pregnancy and especially in labor.

23 SIXTH CAUSE FOR DISCIPLINE

24 (Repeated Negligent Acts - Patient Number 8463658)

25 18. The facts alleged in paragraphs 17.A. and 17.B. above are recalled and
26 incorporated by reference as if fully set forth here,

27 19. Respondent's conduct, as set forth in paragraphs 17.A. and 17.B. above
28 has exposed his certificate to discipline for repeated negligent acts pursuant to Code section

1 2234(c) in that:

- 2 1. He failed to properly manage an ineffective epidural anesthetic for
- 3 labor;
- 4 2. He failed to document steps for troubleshooting patchy epidural
- 5 anesthetics for labor;
- 6 3, He failed to adequately document blood pressure and analgesic
- 7 response;
- 8 4. He improperly intubated the patient at the T12-C1 level rather than
- 9 the L4 - L5 level; and
- 10 5. He used Nonsteroidal Anti-Inflammatory Drugs (NSAIDS) which
- 11 are contraindicated in pregnancy and especially in labor.

12 SEVENTH CAUSE FOR DISCIPLINE

E3 (Incompetence - Patient Number 8463658)

14 20. The facts alleged in paragraphs 17.A. and 17.B. above are realleged and
15 incorporated by reference as if fully set forth here.

16 21. Respondent's conduct, as set forth in paragraphs 17.A. and 17.B. above
17 his exposed his certificate to discipline for incompetence pursuant to Code section 2234(d) in
18 that:

- 19 1. He failed to properly manage an ineffective epidural anesthetic for
- 20 labor;
- 21 2. He failed to document steps for troubleshooting patchy epidural
- 22 anesthetics for labor;
- 23 3. He failed to adequately document blood pressure and analgesic
- 24 response;
- 25 4. He improperly intubated the patient at the T12-L1 level rather than
- 26 the L4 - L5 level; and
- 27 5. He used Nonsteroidal Anti-Inflammatory Drugs (NSAIDS) which
- 28 are contraindicated in pregnancy and especially in labor,

EIGHTH CAUSE FOR DISCIPLINE

(Gross Negligence/Repeat Negligent Acts/Incompetence - Patient Number 8463658)

22. The facts alleged in paragraphs 17.A. and 17.B. above are realleged and incorporated by reference as if fully set forth here.

23. Respondent's conduct, as set forth in the Fifth, Sixth, and Seventh Causes For Discipline, whether taken collectively, or individually, or in any combination thereof, constitute gross negligence and/or repeated negligent acts and/or incompetence pursuant to Code sections 2234(b) and/or 2234(c) and/or 2234(d).

NINTH CAUSE FOR DISCIPLINE

(Gross Negligence - Patient Number 10533664)

24. Respondent is subject to disciplinary action under sections 2234(b) and/or 2234(c) and/or 2234(d) in that respondent failed to monitor intracardiac pressures, intravascular volume, and systemic vascular resistance. The circumstances are as follows:

A. The facts underlying the care provided Patient Number 1053364 are that on or about January 15, 2001, respondent performed a general anesthesia using a radial artery line on a 41-year-old male with malignant pheochromocytoma and renal failure who underwent excision of pheochromocytoma, left adrenalectomy and left nephrectomy. A central venous dialysis catheter was in place prior to the surgery but was not used during surgery for pressure monitoring or fluid management. The surgeon in this case, Dr. Soebagio, went to the anesthesia evaluator with his concerns and the evaluator concluded the incident was a window into respondent's "lack of basic medical knowledge."

B. Respondent's conduct, as set forth in paragraph 24.A. above has exposed his certificate to discipline for gross negligence pursuant to Code section 2234(b) in that:

1. He failed to monitor intracardiac pressures, intravascular pressure, and systemic vascular resistance in a high risk patient; and
2. He failed to properly assess anesthetic and surgical risk in a high risk patient.

TENTH CAUSE FOR DISCIPLINE

(Repeated Negligent Acts - Patient Number 10533664)

25. The facts alleged in paragraph 24.A. above are realleged and incorporated by reference as if fully set forth here.

26. Respondent's conduct, as set forth in paragraph 24.A. above has exposed his certificate to discipline for repeated negligent acts pursuant to Code section 2234(c) in that:

- 1. He failed to monitor intracardiac pressures, intravascular pressure, and systemic vascular resistance in a high risk patient; and**
- 2. He failed to properly assess anesthetic and surgical risk in a high risk patient,**

ELEVENTH CAUSE FOR DISCIPLINE

(Incompetence - Patient 10533664)

27. The facts alleged in paragraph 24.A. above are realleged and incorporated by reference as if fully set forth here.

28. Respondent's conduct, as set forth in paragraph 24.A. above has exposed his certificate to discipline for incompetence pursuant to Code section 2234(d) in that:

- 1. He failed to monitor intracardiac pressures, intravascular pressure, and systemic vascular resistance in a high risk patient; and**
- 2. He failed to properly assess anesthetic and surgical risk in a high risk patient.**

TWELFTH CAUSE FOR DISCIPLINE

(Gross Negligence/Repeated Negligent Acts/Incompetence - Patient 10533664)

29. Respondent's conduct, as set forth in the Ninth, Tenth, and Eleventh Causes For Discipline, whether taken collectively, or individually, or in any combination thereof, constitutes gross negligence and/or repeated negligent acts and/or incompetence pursuant to Code sections 2234(b) and/or 2234(c) and/or 2234(d).

1 THIRTEENTH CAUSE FOR DISCIPLINE

2 (Gross Negligence/Repeated Negligent Acts/Incompetence

3 30, Respondent's conduct, as set forth in the Fiat, Second, Third, Fifth, Sixth,
4 Seventh, Ninth, Tenth, and Eleventh Cause For Discipline, whether taken collectively, or
5 individually, or in any combination thereof, constitutes gross negligence and/or repeated
6 negligent acts and/or incompetence pursuant to Code sections 2234(b) and/or 2234(c) and/or
7 2234(d).

8 PRAYER

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein
10 alleged, and that following the hearing, the Medical Board of California issue a decision:

11 1. Revoking or suspending Physician And Surgeon Certificate Number
12 C-43360, issued to Dan Sodusta Mallada, M.D.;

13 2. Revoking, suspending or denying approval of Dan Sodusta Mallada,
14 M.D.'s authority to supervise physician's assistants, pursuant to section 3527 of the Code;

15 3. Ordering Dan Sodusta Mallada, M.D. to pay the Board the reasonable
16 costs of the investigation and enforcement of this case, and, if placed on probation, the costs of
17 probation monitoring;

18 4. Taking such other and further action as deemed necessary and proper.

19 DATED: July 9, 2001

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21
22 *for* Ron Joseph
23 RON JOSEPH
24 Executive Director
25 Medical Board Of California
26 State of California
27 Complainant
28

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ORIGINAL

1 **BILL LOCKYER, Attorney General**
 2 **of the State of California**
 3 **GAIL M. HEPPELL**
 4 **Supervising ~~Deputy~~ Attorney General**
 5 **ISA R. RODRI (State Bar No. 104838)**
 6 **Deputy Attorney General**
 7 **2550 Mariposa Mall, Suite 5090**
 8 **Fresno, California 93721**
 9 **Telephone: (559) 444-2437**

10 **Attorneys for Petitioner**

FILED**JUN 15 2001**

Office of Administrative Hearings

By *Cheney*

BEFORE THE
 OFFICE OF ADMINISTRATIVE HEARINGS
 STATE OF CALIFORNIA

10 **RONALD JOSEPH, Executive Director,**
 11 **Medical Board of California,**

2001
 No. 08-~~2400~~-119217

OAH No. N-2001-060184

12 **Petitioner,**

**INTERIM ORDER
 SUSPENDING A LICENSE
 PRIOR TO HEARING
 PURSUANT TO GOVERNMENT
 CODE SECTION 11529(c)**

13 **v.**

14 **DAN SODUSTA MALLADA, M.D.,**
 15 **California Physician and**
 16 **Surgeon's Certificate.**
 17 **No. C-43360,**

18 **Respondent.**

19 **To Dan Sodusta Mallada, M.D.:**
 20 ***AN ADMINISTRATIVE LAW JUDGE***
 21 **~~THE MEDICAL QUALITY HEARING PANEL~~ OF THE OFFICE OF**

22 **ADMINISTRATIVE HEARINGS, having read and considered the Petition for Interim**
 23 **Suspension Order, the supporting memorandum of points and authorities, and the declarations,**
 24 **affidavits, and exhibits submitted by the Office of the Attorney General,**

25 **HEREBY ORDERS THAT Physician and Surgeon's Certificate C-43360, issued**
 26 **to Dan Sodusta Mallada, M.D., is immediately suspended.**

27 **IT IS FURTHER ORDERED that Dan Sodusta Mallada, M.D. shall, upon**
demand, turn over to the Medical Board for safekeeping all triplicate prescription pads and
prescription blanks in his possession or under his custody or control.

1 IT IS FURTHER ORDERED that respondent Dan Sodusta Mallada, M.D.,
2 appear at the Office of Administrative Hearings located at 560 "J" Street, Suite 300,
3 Sacramento, California, on the 25TH day of JUNE, 2001, at 11:00
4 A.m. for the hearing provided in Government Code section 11529(d).

5 This order, the petition, the memorandum of points and authorities and all
6 supporting evidence filed by the Office of the Attorney General shall be served upon
7 respondent by a 24 hour delivery service.

8 Respondent shall file any response with the Office of Administrative Hearings
9 and shall serve any such response on petitioner through its attorney of record, Isa R.
10 Rodriguez, by 24 hour delivery service on or before JUNE 22, 2001.

11 Petitioner may file and serve upon respondent any reply to the response at the
12 above-noticed hearing.

13 IT IS SO ORDERED this 15TH day of June, 2001.

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15 
16 ADMINISTRATIVE LAW JUDGE
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BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

RONALD JOSEPH, Executive Director,
Medical Board of California,

Petitioner,

vs.

DAN SODUSTA MALLADA, M.D.
California Physician and Surgeon's
Certificate No. C-43360,

Respondent.

Case No. 08-2000-119217

OAH No. N20010601114

INTERIM SUSPENSION ORDER

The matter came on regularly for hearing pursuant to Government Code §11529 before Jaime René Román, Presiding Administrative Law Judge, Office of Administrative Hearings, State of California, in Sacramento, California, on June 25, 2001.

Ismael Castro, Deputy Attorney General, Health Quality Enforcement Section, Office of the Attorney General, Department of Justice, State of California, represented petitioner.

Respondent Dan Sodusta Mallada, M.D., ("respondent") appeared and represented himself.

Evidence was received and the matter submitted on June 25, 2001.

FACTUAL FINDINGS

1. On May 29, 1996, the Medical Board of California issued Physician's and Surgeon's Certificate Number C-43360 to respondent. On June 15, 2001, incident to an Ex Parte Petition for Interim Suspension Order, an order was granted suspending respondent's certificate pending hearing on June 25, 2001.

2. On March 13, 2001, Kaiser Foundation Hospital submitted a Business and Professions Code §805 Report indicating that respondent's privileges had been summarily suspended. The report stated that early in the procedure to intubate a patient, "the patient's

heart stopped and a code was instituted. The back-up anesthesiologist was called and took over the case, removed the tube, and successfully intubated the patient. Dr. Mullada was immediately taken off duty pending the outcome of an investigation." The investigation revealed that a 26-year old pregnant patient, 5' 4", weighing 270 pounds, was admitted to Kaiser Permanente Hospital in Fresno, California, for labor and delivery. At 3:20 p.m., pursuant to a physician order stating, "OK for epidural," respondent commenced an epidural anesthetic infusion. At 6:00 p.m., the fetus developed a non-reassuring heart rate pattern and the obstetrician decided to proceed with a C-section. Anesthesia induction occurred at 7:05 p.m. with surgical incision at 7:11 p.m. After initial abdominal wall incision, respondent extubated the patient after noticing a problem with and tidal carbon dioxide tracing. At about 7:10 p.m., "code blue" resuscitation commenced with differing accounts relating to oxygen deficiency. Regardless, the patient suffered cardiac arrest for approximately 16 minutes. Respondent sought to intubate the patient but was having difficulty. Remaining incisions were made hurriedly with infant delivery at 7:14 p.m. A back-up anesthesiologist intubated with little difficulty. Following reintubation and successful cardiac resuscitation, the patient was transferred to the coronary care unit where she remained until her death, without ever having regained consciousness, on March 11, 2001.

3. On December 7, 2000, respondent consulted for neuraxial analgesia for labor on a 37-year old pregnant patient in active labor. Respondent placed an epidural anesthetic at the T12 - L1 level that worked initially however, as labor progressed, did not work well. Respondent was relieved by another anesthesiologist. When asked about the epidural, respondent indicated "L3 - L4" which was not the placement found by his relief. Inquiring further about the contraindicated use of NSAIDS in pregnancy and, in particular, labor, respondent indicated he had read literature about using NSAIDS despite warnings to the contrary in the Physician Desk Reference. Respondent's management failed to meet the standard of care by failing to document steps for troubleshooting a patchy epidural anesthetic for labor or document blood pressure and analgesic response.

4. On January 15, 2001, respondent performed a general anesthesia using a radial artery line on a 41-year old male with malignant pheochromocytoma and renal failure who underwent excision of pheochromocytoma, left adrenalectomy and left nephrectomy. A central venous dialysis catheter was in place prior to the surgery but not employed. The attending surgeon expressed concerns with respondent's practice modality. Respondent's management failed to meet the standard of care by failing to properly monitor intracardiac pressures, intravascular volume, systemic vascular resistance, and by failing to demonstrate proper patient anesthetic assessment and surgical risk.

5. Respondent, acknowledging some deficiencies, minimizes his culpability and shifts some responsibility to the nurses present in the operating rooms, the attending surgeon, and in professional differences in anesthetic modalities.

6. Respondent, following his management of the patient referenced in Finding 2, was terminated from his employment. Incident to that patient's death, he was professionally referred for psychotherapeutic intervention. Respondent, to his credit, acknowledges the

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for Each Question

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2. Are there any criminal charges against you now pending? (Parking or speeding violations do not require you to answer "Yes," but all other motor vehicle offenses must be disclosed.) 2.
3. Has your professional license been revoked or suspended (whether active or stayed) by any licensing board? 3.
4. Is any action now pending against your professional license or have you been permitted to surrender or otherwise relinquish your license to avoid inquiry, investigation or action by any state licensing board? 4.
5. Is the mailing address printed on this form correct? (See Section E instructions on the reverse side.) 5.

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Date

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031

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MA 41180

DANILLO S. MAWADA, MD

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EXHIBIT B